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SIPDIS

DEPT FOR L/LEI (PGUTHERIE), S/WCI (WILLIAMSON, LAVINE), AND EUR/SCE
(STINCHCOMB, BALIAN)

DOJ/OIA FOR M. DITTOE AND T. MCHENRY

SENSITIVE

SIPDIS

E.O. 12958: N/A

TAGS: [CJAN](#) [KCRM](#) [KAWC](#) [HR](#)

SUBJECT: ACTION AND FOLLOW UP REPORT FOLLOWING DOJ VISIT TO CROATIA

REF: (A) 07 Zagreb 1074 (B) 07 Zagreb 1000

11. (SBU) SUMMARY. Senior DOJ/OIA Trial Attorneys Michael Dittoe and Teresa McHenry met with officials from the Croatian Ministry of Justice Directorate for International Legal Assistance, Office of the State Prosecutor and the Ministry of Foreign Affairs to discuss extradition issues between the United States and Croatia and a number of Croatian requests for extradition, some dating back as far as 2005, that are still pending. The Attorneys also followed up on the Croatian request for assistance in securing US witness testimony in the Ademi-Norac war crimes trial, which is currently ongoing. The results of those discussions, and the actions agreed upon during the course of those discussions, as understood by post, are listed below. END SUMMARY

Prospects for a new extradition treaty

12. (U) Both sides agree that the existing list treaty from 1901 is badly outdated. However, the GoC still has difficulties with the USG requirement for Croatia to agree to extradition of its nationals. DOJ provided MOJ with a list of new EU-member states that have agreed to extradition of their nationals. MOJ requested a complete list of countries with which the U.S. has extradition treaties that permit extradition of nationals.

Croatian difficulties with 60-day clock

13. (U) DOJ clarified that the 60-day clock in which Croatia must pick up its fugitive begins tolling from the day of the final verdict. As the defendant has the right of appeal, DOJ would not notify Croatia of the verdict until the 30-day mark, when the order of extradition was given to the Secretary for signature. MOJ noted that this was not enough time for it to arrange travel of the escort officers and obtain the necessary transit permissions. In response to MOJ's concerns, DOJ agreed to notify MOJ when the clock begins, and again at the 30-day mark.

Communication between DOJ and MOJ on pending cases

14. (SBU) DOJ requested a POC for case specific questions. DOJ noted as an example how helpful it was in the recent Pavic case in Michigan to speak directly with the prosecutor handling the case. As the appropriate party will vary depending on the stage of the case, MOJ proposed remaining the primary POC. It agreed to liaise with the Office of the State Prosecutor or Investigative Judge as appropriate and arrange conference calls as needed.

Simplification of transmission of requests

15. (U) Transmission of extradition requests through diplomatic channels is mandated by the treaty. However, DOJ noted, that requirement is satisfied by the request being sent from the Croatian Embassy under cover of diplomatic note; it need not also go through the Croatian MFA. DOJ and MOJ asked post to present by letters to the MFA and MOJ a proposal for post to send future extradition requests, following consular certification, directly to the Croatian Embassy in Washington.

Changes in Croatian extradition requests

16. (U) MOJ agreed to advise the Croatian judiciary to be more discriminate in making requests for extradition. In addition, it will inform judges that requests to the United States must contain supporting evidence. DOJ presented a Croatian translation of an explanation of the U.S. extradition process, which MOJ will put on its website.

17. (SBU) DOJ requested that, in consideration of the level of evidence needed to support a request for extradition in U.S. court, MOJ only make requests for extradition after the investigative judge has issued an indictment. Exceptions could be made in cases involving violent crimes in urgent circumstances, such as in the case of apprehension at a port of entry en route to a country with which Croatia does not have an extradition treaty. MOJ noted that submitting only post-indictment cases is a significant change in procedure but agreed and would so inform the judiciary.

Status of pending extradition requests

18. (SBU) Discussion of specific pending cases resulted in the following conclusions:

Jozo NOVAKOVIC: There is insufficient evidence to support the charges of torture and, as assault is not covered by the treaty, the request for extradition will be declined.

Iso BJELANOVIC: There is insufficient evidence linking the subject to the crime so the request for extradition will be declined. However, the subject's case is of interest to ICE and DOJ/OSI; witness statements provided by the prosecutor will be passed to those offices.

Stevo CVJETICANIN: There is insufficient evidence to link the subject to the crime, so the request will be declined.

Zeljko DRACA: It is understood that Croatia will not proceed with a formal request for extradition in this case.

Milorad SUSNJAR: The request currently does not contain sufficient evidence linking the subject to the crime. However, MOJ may be able to obtain this evidence through a request for mutual legal assistance asking U.S. authorities for a recent photo of the subject, which could be used by witnesses in a photo array. MOJ will submit this request within 30 days. If MOJ then determines that it wishes to proceed with the request for extradition, it will reopen investigative proceedings and bring an indictment against the subject, when it may resubmit the request for extradition.

Slobodan MUTIC: MOJ agreed that it would seek an indictment in this case, reframed as charges for murder rather than war crimes, and resubmit the formal request for extradition in the next 90 days.

Slavko MAZIBRADA: MOJ agreed to correct the mistranslation in the original request for extradition and resubmit its request, with additional identifying information, in the next 30 days.

Nikola GOLUBOVIC: In response to DOJ's concerns that this case would fall under the political offense exception, MOJ agreed to provide additional background information to establish that the victims were not legitimate targets of war. MOJ will also in the next 30 days provide names of experts with whom DOJ can consult on these issues.

Predrag STRBAC: MOJ agreed to consult with the prosecutor handling

this case to determine if additional evidence exists that would establish probable cause. MOJ will notify DOJ within 30 days of its findings and whether it wishes to proceed with the request.

DOJ to assist in witness testimony for ICTY war crimes transfer case

¶9. (SBU) The attorneys' visit also provided an opportunity to meet with the presiding judge in the Ademi-Norac case, an ICTY transfer case involving war crimes by Croatian generals against ethnic Serb civilians. Through Post (reftels), Judge Marin Mrcela had requested USG assistance in locating victims and witnesses in the US and facilitating their testimony, which DOJ is pursuing. Those requests were also submitted formally through the Ministry of Justice. In November, Mrcela had requested testimony of three individuals who were known to be located in the US, and recently requested a fourth, whose identity is protected. All individuals are ethnic Serbs and either victims or witnesses to alleged crimes committed in 1993 in the Medak Pocket operation. For two of the individuals, the ICTY took testimony in the late 1990s, which is admissible in court. For the two others, since their testimony was taken by police, under Croatian law it is not admissible in court. Therefore, their anticipated testimony is particularly important.

¶9. (SBU) In facilitating this request, DoJ's Dittoe had previously advised what information and evidence DOJ needed to support such assistance. In addition to letters rogatory, US prosecutors need previous testimony, witness links to the defendants and alleged crimes, and a statement of the Ademi-Norac case and charges. Based on conversations with the judge and his presentation of evidence, DOJ has concluded that there is sufficient evidence to locate these individuals in the US, and if necessary, compel testimony. Most likely all witnesses will testify via video-link; Mrcela has set aside dates in March for the questioning. The Ministry of Justice has been largely absent from this process, although Post understands that they have successfully facilitated witness testimony from other countries including Serbia, Norway, and Sweden.

¶10. (SBU) As of mid-February, approximately half of the endangered witnesses and nearly sixty per cent of non-endangered Serb witnesses who had been called in the Ademic-Norac trial have appeared to testify. There are approximately 103 witnesses in total, about 28 of which, including the four in the U.S., remain to be questioned. (NOTE: Of those 28, the judge estimates perhaps 19 will testify. Several are critically ill, have refused to testify, or are deceased. Five cannot be located. END NOTE.) The case is expected to be completed in the next two months.

COMMENT

¶11. (SBU) COMMENT: DOJ's meetings with MOJ were very successful in not only establishing a personal rapport with their counterparts, but also in dispelling many of MOJ's misconceptions about the U.S. extradition process - and was particularly well-timed, coming on the heels of unsuccessful extradition from the U.S. of Goran Pavic.

¶12. (SBU) Over the course of the discussions, it became clear that some of the difficulty the U.S. has had with Croatian extradition requests arises from the difference between the GoC process with EU countries versus that with the U.S. The evidentiary threshold and level of documentation necessary to support extradition requests to the U.S. is far higher than that required by EU-member states. As a result, the MOJ was unprepared to properly support many of its requests to the U.S. The extradition process is further complicated by the lack of clear lines of internal communication within the judiciary. DOJ's visit allowed us to clarify avenues we can use to pursue additional information and evidence. Nevertheless, the Croatian legal system - including the MOJ - remain burdened by its own bureaucratic inertia.

¶13. (SBU) DOJ's visit hopefully impressed upon the MOJ and MFA their ability to exercise discretion in forwarding extradition requests, and also the necessity for doing so given the significant number of unsubstantiated, unprofessionally processed indictments and convictions following the war. The very technical, working level discussions brought a better understanding to both sides of the

vastly different standards of evidence necessary in the U.S. and Croatian legal systems and, we hope, will result in more successful handling of bilateral extradition requests. END COMMENT.

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